



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 8, 2003

Mr. Royce Poinsett
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2003-2330

Dear Mr. Poinsett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#s 178983 and 179780. We have combined these files and will consider the issues presented in this single ruling assigned ID# 178983.

The Office of the Governor received four requests for information relating to Governor Perry's proposed state budget. You indicate that some of the requested records do not exist. You also state that you have released some of the records responsive to one of the requests. You claim, however, that the remaining responsive documents are excepted from disclosure under sections 552.106 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample records.¹ We have also considered the comments submitted by one of the requestors. *See Gov't Code § 552.304* (permitting interested party to submit reasons why requested information should or should not be released).

¹We assume that the "sample" records submitted to this office are truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We find that the submitted documents are subject to mandatory public disclosure under section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate.

Gov't Code § 552.022(a)(5).

Texas law requires the governor – “the chief budget officer of the state,” Gov’t Code § 401.041 – to “compile the biennial appropriation budget” and deliver it to each member of the legislature “not later than the sixth day of each regular legislative session.” *Id.* §§ 401.0445(a), .046(a). The requested documents are working papers and other information used to produce the governor’s required budget proposal pursuant to Subchapter C, Chapter 401 of the Government Code. The requested information informs the governor’s estimation of state government revenues and expenditures and thus falls squarely within a specific category of materials expressly deemed “public information and not excepted from required disclosure” under the Public Information Act. *Id.* § 552.022(a)(5).

Because section 552.022(a)(5) of the Government Code applies to the requested budget-related information, release is mandatory “unless [the information is] expressly confidential under other law.” *Id.* § 552.022(a). You argue that the requested information is excepted from disclosure under sections 552.106 and 552.111; however, these discretionary exceptions are insufficient to make information confidential for purposes of section 552.022(a). *See, e.g., In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001) (stating that discretionary exceptions are not “other law” for purposes of Gov’t Code § 552.022); Open Records Decision No. 665 at 2 n.5 (2000) (addressing distinction between mandatory and discretionary exceptions to disclosure). Accordingly, the requested information must be released since it is deemed public under section 552.022(a)(5) and is not expressly confidential under other law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

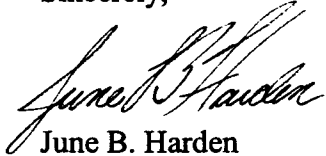
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 178983

Enc: Submitted documents

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